

Serial No. 10/612,091
Art Unit 1773

Amendment B After Final

Remarks:

In response to the Official Action mailed January 27, 2006, which Action was made final, Applicant respectfully requests reconsideration, reexamination and allowance of claims 1, 4, 6-7 and 9 in view of the above amendments and the following remarks. By this Amendment, Applicant has withdrawn claims 10-20.

The Examiner has first rejected claims 1, 4-7 and 9 under 35 U.S.C. §112, second paragraph as reciting concentrations in percentages without a basis for the percentages.

Applicant has amended the pending claims as appropriate to recite that the percentages are based upon the weight of the sealant. Applicant respectfully requests that this basis for rejection now be withdrawn.

Next, the Examiner has continue the rejection of claims 1, 4 and 7-8 under 35 U.S.C. §102(b) as anticipated by Knight and has continued the rejection of claims 5-6 as unpatentable now also over Knight.

Applicant has amended independent claim 1 to, among other things, to better define the sealing element as formed from a desirably shaped body of a sealant material, in which the sealant material is formulated from a first polymer that is an ethylene vinyl acetate copolymer in a concentration of about 25 percent to about 40 percent by weight of the sealant material, a calcium carbonate inert filler material in a concentration of about 20 percent to about 45 percent by weight of the sealant material, a second polymer that is an ethylene polymer other than an ethylene vinyl acetate copolymer in a concentration of about 20 percent to about 35 percent by weight of the sealant material and a hydrocarbon resin in a concentration of about 1 percent to about 15 percent by weight of the sealant material. In such a sealing element, the sealant material, when positioned about a first component is overmolded with a material forming a second component. The sealant material, which is heat activated, forms a seal between the first and second components.

The Examiner has taken the position that although Knight does not specifically disclose the use of calcium carbonate as an inert filler, it would have been obvious to one of skill in the

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art to use calcium carbonate in the recited percentages (as stated by the Examiner, "calcium carbonate is an obvious species of filler material or inorganic pigment utilized in the art . . .") without any cited references or any shown motivation in the art to make this addendum to the composition of Knight. In fact, Applicant submits that the specific use of calcium carbonate in the recited percentages is asserted by the Examiner only with the benefit of hindsight, and that no *prima facie* case of obviousness has been shown.

It is well settled that hindsight is an improper basis to assert and maintain an obviousness rejection. And, when as here, there is nothing else that the Examiner has offered in the way of teaching, motivation or suggestion to support the position that the claimed invention would have been obvious, it is clear that hindsight is the motivating factor.

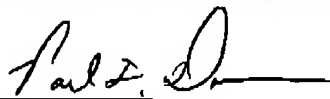
Accordingly, Applicant submits that claims 1, 4, 6-7, and 9 are allowable over the art of record and are fully in comport with §112 and respectfully and earnestly solicits early indication of same.

Should the Examiner believe that a telephone interview would expedite prosecution and allowance of the present application, or address any outstanding formal issues, she is respectfully requested to contact the undersigned.

Respectfully submitted,

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